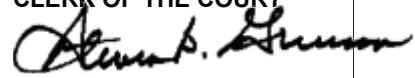


EXHIBIT A

First Amended Complaint



1 **ACOM**
 2 STEVEN H. BURKE, ESQ.
 3 Nevada Bar No. 14037
 4 LAW OFFICE OF STEVEN H. BURKE, LLC
 5 D.B.A. THE 808 FIRM
 6 9205 W. Russell Road, Suite 240
 7 Las Vegas, Nevada 89148
 8 T: 702-793-4369 | F: 702-793-4301
 9 Email: stevenburkelaw@gmail.com

10 *Attorney for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 BRITTANY NEILSON, an individual

14 Plaintiff,

15 vs.

16 CTRENDS INC.; DOES I through X;
 17 and ROE Corporations XI through XX,
 18 inclusive,

19 Defendant.

20 Case No. A-22-849477-C
 21 Dept. No. 29

22 **PLAINTIFF'S FIRST AMENDED
 23 COMPLAINT WITH JURY DEMAND**

24 **PLAINTIFF'S FIRST AMENDED COMPLAINT**

25 COMES NOW Brittany Neilson ("Plaintiff" or "Ms. Neilson"), by and through her
 26 attorney, Steven H. Burke, Esq. of Law Office of Steven H. Burke, and hereby files her First
 27 Amended Complaint and complains of Defendant CTRENDS INC. ("Defendant" or "CTrends")
 28 as follows:

29 **VENUE AND JURISDICTION**

30 1. This is a civil action for damages under state and federal laws prohibiting unlawful
 31 employment actions and to secure the protection of and to redress deprivation of rights under
 32 these laws.

33 2. Jurisdiction and venue are based upon federal and state law.

34 3. Jurisdiction and venue are also proper based upon Plaintiff's claims under Nevada
 35 state and common law.

1 4. Plaintiff hereby designates Clark County as the venue for this proceeding per NRS
2 § 13.040 and files in the Eighth Judicial District Court accordingly.

3 5. The alleged unlawful employment actions occurred in this judicial district.

4 **PARTIES**

5 6. At all times relevant, Plaintiff is and was an individual residing in Clark County,
6 Nevada.

7 7. At all times relevant, Defendant is and was a California Company created under
8 the laws of the State of California.

9 8. At all times relevant, Defendant was conducting business in Clark County,
10 Nevada.

11 9. At all times relevant, Defendant had custody and/or control over Plaintiff and her
12 employment, and Defendant was responsible for Plaintiff's labor and employment matters.

13 10. At all times relevant, Plaintiff was an employee of Defendant as that term is
14 defined in NRS Chapter 613, 29 U.S.C. § 203, and 42 U.S.C. § 2000e.

15 11. At all times relevant, Defendant was Plaintiff's employer as that term is defined in
16 NRS Chapter 613, 29 U.S.C. § 203, and 42 U.S.C. § 2000e.

17 12. The true names and capacities, whether individual, corporate, associate or
18 otherwise of other Defendants hereinafter designated as Does I-X and Roe Corporations XI-XX,
19 inclusive, who are in some manner responsible for the injuries described herein, and who were,
20 upon information and belief, Plaintiff's "employer" is unknown to Plaintiff at this time who
21 therefore sues said Defendants by such fictitious names and will seek leave of the Court to amend
22 this Amended Complaint to show their true names and capacities when ascertained.

23 13. Plaintiff hereby demands a jury trial on all issues triable by jury herein.

24 **PROCEDUARL REQUIREMENTS**

25 14. Plaintiff has satisfied all administrative and jurisdictional requirements necessary
26 to maintain this lawsuit. Plaintiff timely filed her charge of discrimination with the Equal
27 Employment Opportunity Commission ("EEOC") on or about March 1, 2021. *See* a true and
28 correct copy of Plaintiff's Charge of Discrimination attached hereto as **Exhibit 1**.

FACTUAL ALLEGATIONS

25. On or about May 10, 2020, Ms. Neilson provided an update to Defendant indicating she was discharged from the hospital, but she was advised by her doctor to be on bed

1 rest until her follow-up appointment the next week.

2 26. On or about May 16, 2020, Ms. Neilson provided an update to Defendant
3 indicating her doctor cleared her to return to work on May 25, 2020.

4 27. On or about May 24, 2020, Ms. Neilson contacted Defendant to request details
5 including getting set-up with accounts in returning to work.

6 28. On or about June 2, 2020, Ms. Neilson drove to Defendant's office in California
7 for training for a period of three days, at her own cost.

8 29. On or about June 10, 2020, Ms. Neilson requested to take off work for two hours
9 in the morning to take her 3-year-old child to her first day of preschool.

10 30. On or about June 24, 2020, Ms. Neilson received a telephone call from Manager,
11 who began the call inquiring about Ms. Neilson's child's first day of preschool. Then, Manager
12 told Ms. Neilson that things are getting in the way of her job and the company did not have time
13 or money to waste on a sick pregnant person who wasn't able to do her job.

14 31. During this call on June 24, 2020, Manager told Ms. Neilson that he was doing her
15 a favor by terminating her because she could now focus on herself, her health, and her baby.

16 32. Ms. Neilson understood Manager's acts as stereotypical and discriminatory on the
17 basis of her sex.

18 33. Defendant's termination of Ms. Neilson occurred a short time after she returned to
19 work after her pregnancy.

20 34. Defendant's proffered reason of terminating Ms. Neilson was poor performance
21 issues.

22 35. Defendant's proffered reason for termination was pretextual.

23 **FIRST CAUSE OF ACTION**
24 **SEX DISCRIMINATION/HARASSMENT**
25 **TITLE VII 42 U.S.C. § 2000(e) et seq. / NRS § 613.330**

26 36. Ms. Neilson hereby realleges and incorporates each and every allegation
27 previously made herein.

28 37. As set forth fully herein, Ms. Neilson was subjected to unwelcome sexual

harassment and/or discrimination based on her sex/pregnancy.

38. As set forth fully herein, Ms. Neilson is a member of a protected class, female.

39. As alleged in the facts herein, Defendant discriminated, harassed, and terminated Ms. Neilson on the basis of her sex/pregnancy.

40. Defendant committed unlawful actions, including but not limited to, harassment of Ms. Neilson as a female and based on her being pregnant. Such actions constitute unlawful sex discrimination and harassment.

41. Defendant's unlawful conduct that Ms. Neilson was forced to endure was so severe and pervasive that it was humiliating and interfered with Ms. Neilson's ability to work.

42. Defendant's sexual conduct was sufficiently severe or pervasive as to alter the compensation, terms, conditions and privileges of Ms. Neilson's employment.

43. Defendant, through its agents, became aware of sexual harassment and/or discrimination that Ms. Neilson experienced and took no action to stop it.

44. Given the aforementioned, Defendant's conduct was so severe and pervasive as to constitute an objective abusive hostile work environment in violation of Title VII, 42 U.S.C. §2000(e) *et seq.* Defendant, in creating, condoning, and perpetuating a sexually hostile work environment, has engaged in a discriminatory practice with discriminatory hostility upon Ms. Neilson's status as a female, with malice or reckless indifference to Ms. Neilson's federally protected rights.

45. All of Defendant's unlawful actions described herein were done willfully and intentionally and in reckless disregard of Ms. Neilson's protected rights under federal law.

46. As a direct and proximate result of Defendant's unlawful activity, Ms. Neilson has sustained damages in excess of Fifteen Thousand Dollars (\$15,000.00).

47. The conduct of Defendant has been malicious, fraudulent or oppressive and was designed to vex, annoy, harass or humiliate Ms. Neilson and, thus, Ms. Neilson is entitled to punitive damages.

48. As a result of Defendant's conduct, as set forth herein, Ms. Neilson has been required to retain the services of an attorney and, as a direct, natural, and foreseeable consequence

thereof, has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

SECOND CAUSE OF ACTION
NEGLIGENT HIRING, TRAINING, AND SUPERVISION

49. Ms. Neilson hereby realleges and incorporates each and every allegation previously made herein.

50. Defendant breached its duty of reasonable care to protect Ms. Neilson from the negligent and/or careless actions of their own agents, officers, employees, customers and others.

51. Defendant breached its duty of reasonable care by hiring individuals with a propensity towards committing unlawful acts against Ms. Neilson.

52. Defendant breached its duty of reasonable care by failing to adequately train and supervise their employees by with lawful policies and procedures of discrimination and harassment.

53. As a direct and proximate result of Defendant's conduct described hereinabove, Ms. Neilson has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000).

54. As a result of Defendant's conduct, as set forth herein, Ms. Neilson has been required to retain the services of an attorney, and, as a direct, natural, and foreseeable consequence thereof, has been damaged thereby, and is entitled to reasonable attorney's fees and costs.

55. Defendant acted willfully and maliciously, and with oppression, fraud, or malice, and a result of Defendant's wrongful conduct, Ms. Neilson is entitled to an award of exemplary or punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For general damages in excess of \$15,000.00;
2. For special damages;
3. For consequential damages;
4. For punitive damages;
5. For all damages and relief owed to Plaintiff under the Nevada Constitution and Nevada law;

6. For attorneys' fees and costs incurred in this action; and
7. Such other and further relief as the Court may deem just and proper.

DATED this 2nd day of May, 2022.

LAW OFFICE OF STEVEN H. BURKE

By: /s/ Steven H. Burke
STEVEN H. BURKE, ESQ.
Nevada Bar No.: 14037
9205 W. Russell Rd., Ste. 240
Las Vegas, Nevada 89148
T: 702-793-4369 | F: 702-793-4301
Email: stevenburkelaw@gmail.com
Attorney for Plaintiff

Law Office of Steven H. Burke, LLC
d.b.a. The 808 Firm
9205 W. Russell Rd., Ste. 240, Las Vegas, NV. 89148
TEL.: (702) 793-4369 FAX: (702) 793-4301

EXHIBIT “1”

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 487-2020-01527	
NEVADA EQUAL RIGHTS COMMISSION and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) MISS BRITTANY M NEILSON		Home Phone (949) 304-4663	Year of Birth
Street Address City, State and ZIP Code 4989 GINGERLYN ST, LAS VEGAS, NV 89122			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name CTRENDS		No. Employees, Members 101 - 200	Phone No. 877.472.9050
Street Address City, State and ZIP Code 27142 BURBANK, LAKE FOREST, CA 92610			
Name		No. Employees, Members	Phone No.
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 03-14-2020 06-24-2020 <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): On or about April 23, 2020, I was hired by CTRENDS, as a Sales Account Manager. My last position was Sales Account Manager. On or about March 14, 2020, I informed CTRENDS management that I was pregnant on a conference call. On or about May 3, 2020, I underwent an emergency medical procedure. CTRENDS was made aware of my emergency medical procedure and that I won't be able to go to work until I am released. In or around May 2020, I returned to work. Subsequently, in or around June 2020, I was discharged by Dave West, President of Sales. I was subjected to an offensive remark regarding my pregnancy and caregiving responsibilities during the termination phone call. I believe I have been discriminated against because of my Sex (Female, Pregnancy), and retaliated against for engaging in protected activity, in violation of, Title VII of the Civil Rights Act of 1964, as amended. Additionally, I believe I have been discriminated against			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
Digitally signed by Brittany Neilson on 03-01-2021 12:18 PM EST		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**487-2020-01527****NEVADA EQUAL RIGHTS COMMISSION**

and EEOC

State or local Agency, if any

because of my disability, and retaliated against for engaging in protected activity, in violation of the, Americans with Disabilities Act of 1990, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

**Digitally signed by Brittany Neilson on 03-01-2021
12:18 PM EST**

NOTARY - *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. FORM NUMBER/TITLE/DATE. EEOC Form 5, Charge of Discrimination (11/09).

2. AUTHORITY. 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.

3. PRINCIPAL PURPOSES. The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.

4. ROUTINE USES. This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.

5. WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION. Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

EXHIBIT “2”

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Brittany M. Neilson**
c/o: LAW OFFICE OF STEVEN H. BURKE
Attn: Steven H. Burke, Esq.
9205 W. Russell Road, Suite 240
Las Vegas, NV 89148

From: **Las Vegas Local Office**
333 Las Vegas Blvd South
Suite 5560
Las Vegas, NV 89101

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

487-2020-01527

Saul Vazquez,
Investigator

(702) 553-4460

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒

The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

☐

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐

Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

Michael L. Mendoza,
Local Office Director

(Date Issued)

cc:

CTRENDS Inc.
c/o Sterling S. Winchell
3 HUTTON CENTRE DR
STE 900
Santa Ana, CA 92707

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was issued to you** (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Enclosures(s)

cc: **Sterling S. Winchell**
3 HUTTON CENTRE DR
STE 900
Santa Ana, CA 92707

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

“Regarded as” coverage:

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

Note: Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.